

**BEFORE THE
DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

KYON MAUNG TEO

Dental License No. 42956

Oral Conscious Sedation Certificate No. 355

Respondent

Case No. DBC 2007-24

OAH No. 2007120026

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Dental Board of California, Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective on April 10, 2009.

IT IS SO ORDERED ON March 10, 2009.



FOR THE DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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FOR THE DENTAL BUREAU OF CALIFORNIA
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PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 28-30, October 20-24, 27-31, 2008, and in Modesto, California, on November 3, 2008.

Deputy Attorney General Char Sachson represented complainant Richard L. Wallinder, Jr., Executive Officer of the Dental Board of California, and complainant Cathleen J. Poncabare, Executive Officer of the Dental Bureau of California, Department of Consumer Affairs.

Frank C. Carson, Attorney at Law, represented respondent Kyon Maung Teo, who was present throughout the hearing.

The matter was submitted on November 3, 2008.

FACTUAL FINDINGS

1. On July 20, 1995, the Dental Board of California (board) issued Dentist License No. 42956 to respondent Kyon Maung Teo, D.D.S. On February 7, 2001, the board issued Oral Conscious Sedation Certificate No. 355 to respondent. Respondent's license and certificate were in full force and effect at all times relevant to this proceeding. On August 29, 2007, Richard L. Wallinder, Jr., acting in his official capacity as Executive Officer of the board, filed an accusation against respondent. Respondent filed a notice of defense and a "Special Notice of Defense." On October 1, 2008, Cathleen J. Poncabare, acting in her official capacity as Executive Officer of the Dental Bureau of California, Department of Consumer Affairs (bureau), filed a supplemental accusation against respondent.¹ The allegations in the supplemental accusation are deemed controverted pursuant to Government

¹ On July 1, 2008, the board became a bureau within the Department of Consumer Affairs.

Code section 11507. The accusation alleges, in essence, that while he was the owner of Hatch Dental, respondent engaged in the negligent and incompetent practice of dentistry, that he committed billing fraud, and that he rendered excessive treatment to patients and aided and abetted others to do so. The supplemental accusation alleges that respondent has been convicted of a crime substantially related to the practice of dentistry.

RESPONDENT'S CRIMINAL CONVICTION

2. On June 16, 2008, respondent was convicted, on his plea of no contest, of a violation of Penal Code section 550, subdivision (b)(3) (health benefits fraud), a felony and a crime substantially related to the qualifications, functions, or duties of a dentist. Respondent was sentenced to serve five years in state prison, but execution of sentence was suspended on the condition that he complete five years of probation and serve the equivalent of one year in jail. Respondent was excluded from participating in the Medi-Cal/Medicare programs during the probationary period.

Respondent's wife, Kin Thor Pang, was the business manager at Hatch Dental. On the same date that her husband was convicted, Pang was convicted, on her plea of no contest, of a violation of Penal Code section 32 (accessory). Pang was also excluded from participating in the Medi-Cal/Medicare programs during her 36-month probationary period.

Under the terms of their plea agreements, respondent and Pang must disgorge \$1.5 million, pay the State of California \$1 million for its costs of investigation, and pay \$500,000 to a victim restitution fund to correct the dental treatment respondent's patients received at Hatch Dental.

HATCH DENTAL

3. Respondent owned Hatch Dental between 1999 and 2003. He started the practice as a sole practitioner. His first office location was on Hatch Road in Ceres. In 2001, respondent opened another office in Stockton and, at sometime after October 2002, he opened a third office in Modesto. At its height, Hatch Dental had four dentists in each of the three clinics. Over the four years Hatch Dental was in business, about 67 dentists worked at Hatch. Respondent and his wife established the billing policies for Hatch Dental.

4. The majority of Hatch Dental's patients were Denti-Cal patients. In 2002, Hatch Dental had approximately 3,435 Denti-Cal patients. In that year, of the five Denti-Cal providers in the State of California with 3,400 patients, Denti-Cal paid respondent approximately three times as much (\$3.3 million) as any of the other four providers. With one exception, Denti-Cal paid respondent more money in 2002 than it paid to any other provider in the state, regardless of the size of the provider's patient population. The only provider to which Dent-Cal paid more money than respondent was a practice with over 18,000 patients.

When a dentist performs fillings, Denti-Cal pays the dentist for each surface of a tooth that is restored. In 2002, the most-often performed procedure at Hatch Dental was fillings. In the four other practices with the same number of patients as Hatch Dental, fillings ranked 18th, 16th, 25th, and 24th among all the procedures they performed. Among all procedures performed by Denti-Cal providers statewide, fillings ranked 23rd. In 2002, Denti-Cal paid a total of \$14.8 million for fillings to all its providers in the state. Of that amount, Denti-Cal paid approximately 10 percent (\$1.4 million) to Hatch Dental.

Between 1999 and 2003, Hatch Dental billed Denti-Cal approximately \$44.9 million and Denti-Cal paid Hatch Dental approximately \$10 million.

5. Dentists at Hatch Dental were paid on a commission basis: 25 percent of the amount Hatch Dental collected on the procedures the dentist performed. Since most of the patients were Denti-Cal patients, each dentist's pay was based primarily on collections from Denti-Cal. When respondent first started his clinic, he paid the front office billers on an hourly basis. Eventually, the billers were also paid, at least partly, on a commission basis.

6. Eight former employees testified to the dental and billing practices at Hatch Dental. Six of the former employees were dentists, and two worked as billers in the front office. These employees worked at both the Ceres and the Stockton office. The dentists worked directly with respondent and the billers worked directly with Pang or in close proximity to her. One witness worked at Hatch Dental for over a year. All of the others worked there for a short time before choosing to leave or, in the case of one dentist, before being terminated for "low production." The dentists had varying levels of experience when they started at Hatch Dental, but they all shared common experiences at respondent's clinics. The testimony of respondent's former employees was credible and persuasive. Among other things, their testimony established the following:

Respondent encouraged dentists at Hatch Dental to perform unnecessary procedures to raise "production." He criticized treatment plans that he viewed as too conservative, and told dentists that they should be "more aggressive" so that they could make more money. Respondent encouraged dentists to do as many fillings as possible. Respondent himself added procedures to the treatment plans of his dentists. All of respondent's additions enlarged, rather than restricted, the procedures called for by the prior dentist. For example, respondent added fillings, changed "possible" root canals into definite root canals, and changed big fillings into crowns.

Respondent fostered a competitive environment among his dentists to perform more procedures and make more money. One dentist, Hoon Young Chang, D.D.S., was a particularly high producer who performed lots of procedures, particularly "pinhole" fillings; these were described as "tiny little holes in the center of the tooth" that did not follow the outline form. Respondent and Pang held up Chang as a positive example to new dentists. Pang told one new dentist that if he performed as many procedures as Chang did, he could retire in five years. Hazaifa Maloo, D.D.S., was an experienced dentist when he started at Hatch Dental in early 2002, but respondent terminated his employment after three months

because of low production. Dr. Maloo stated that working at Hatch Dental was like being a police officer and "getting paid based on the number of tickets you write."

Hatch Dental sought preauthorization from Denti-Cal to perform four quadrants of root scaling and planing (subgingival curettage) on all adult patients. A request to authorize subgingival curettage must be supported by a periodontal examination and a completed periodontal chart. In a periodontal examination, the dentist uses a special probe to examine the pocket depths of the gums on the six faces of every tooth; the dentist calls out his or her measurements to an assistant, who writes down the numbers on the chart above the illustration of each tooth. Until October 2002, however, when state investigators executed search warrants at respondent's residence and clinics, periodontal examinations were often not performed at Hatch Dental. The billers completed periodontal examination charts, showing false pocket depths, based on a "sample" chart in respondent's billing manual.

One of the dentists, Ky Quoc Ha, D.D.S., worked at Hatch Dental every other Saturday between February and June 2002. Ha saw a patient with four or five composite fillings in her upper anterior teeth that had fallen out. The fillings had been done two weeks earlier at Hatch Dental. Ha told the patient that he would replace them. Respondent, however, told Ha that he would rather have the fillings replaced by the dentist who had done the work. Ha told respondent he would be happy to do the work, that he thought it would be important for the reputation of the office, but respondent told him that if he did the work, he would not be paid for it. Respondent asked Ha if the patient was in pain and, when Ha told him that she was not, respondent said that he would reschedule the patient with the dentist who had done the work.

Another dentist, Alfred dela Cruz, D.D.S., worked at Hatch Dental for one day a week for four or five weeks in April 2002. When he started work, respondent told him that he would be doing a lot of fillings; respondent encouraged him to do as many fillings as possible. Dela Cruz saw patients who had received fillings from Hatch Dental that, in his view, were not necessary. Many of the fillings were "FIL's," fillings on the facial, incisal, and lingual surfaces of a tooth. Dela Cruz saw one patient whose treatment plan showed that he had received FIL's, but there were no FIL's in the patient's mouth. Dela Cruz informed respondent, who told him to "keep it quiet." Dela Cruz also saw a Hatch Dental patient who had a shiny new filling over an older, dark black silver filling.

One of the front office billers, Cindy Ronquillo, worked in the front office of Hatch Dental for about one week in 2001. She had previous experience as the front office manager in another dental office. She quit her job at Hatch Dental when Pang directed her to forge a patient's name on a document attesting that the patient had received the treatment called for by a treatment authorization request.

7. In April 2002, the Bureau of Medi-Cal Fraud and Elder Abuse of the California Department of Justice received a complaint from M.S., one of respondent's patients. (Findings 25 through 30.) In October 2002, investigators for the Bureau executed search warrants at respondent's residence and the Hatch offices in Ceres and Stockton.

Among other things, the investigators seized billing manuals, billing instructions, and selected patient records.

One of the documents seized, entitled "How to increase MediCal collection," sets forth instructions to billers. Among other things, the document states "See x-ray for surgical extraction; if the tooth is easy to come out, dentist wrote down surgical extraction, bill 7210 but production is 7110." The code number "7210" is used for a surgical extraction, a procedure for which Denti-Cal provides a higher reimbursement than a simple extraction, a "7110" procedure. The meaning of the document is that while Hatch Dental would bill Denti-Cal for a surgical extraction, the dentist's pay would be based upon the lower reimbursement for a simple extraction. The document goes on to state, "Cannot tell any one about the production; it is very confidential. You will get fired and get sued by Hatch Dental if you disclose the production to others." It concludes, "Do the way [Pang] and [respondent] want, not the way you want, otherwise you may not work here."

Also seized was a binder labeled "Medical [sic] Billing Procedures." In the binder is a periodontal examination chart with pocket depths written in for each of the six faces on the 32 teeth on the chart. Investigators found 11 patient files with completed periodontal charts that were identical in every respect, except for extracted teeth, with the measurements on the chart in the billing binder.

8. In April 2003, the California Department of Health Services temporarily suspended respondent's Medi-Cal provider numbers based upon its determination that respondent had submitted false and/or fraudulent claims to the Denti-Cal Program. As a result of the department's action, respondent was prohibited from submitting claims to the Denti-Cal Program under his provider numbers.

At some time prior to July 2003, investigators for the Bureau of Medi-Cal Fraud became suspicious of an unusually high volume of Denti-Cal claims originating from a dental office on Oakdale Road in Modesto. The number of claims had spiked in recent months and appeared to be far in excess of the billings that could be generated by a single office. The claims were being presented under the Denti-Cal provider number of Paul Kan, D.D.S., a dentist who had formerly practiced in San Jose. At that time, there was no apparent connection between the Oakdale Road dental office and Hatch Dental.

Investigators for the Bureau executed a search warrant at the Oakdale Road dental office on July 10, 2003. Jeffery Wall, at that time a special agent for the Bureau, was among the officers who participated in the operation; Wall had also participated in the search of respondent's residence in October 2002. When Wall entered the Oakdale Road office, he was led to an office in the back where he encountered Pang, respondent's wife. Both of them recognized one another. When Pang saw Wall, she said "Uh-oh."

Wall later determined that, during the time respondent's Medi-Cal provider numbers were suspended, he had been seeing patients at the Hatch Dental offices and submitting claims for reimbursement to Denti-Cal through the Oakdale Road office using Kan's

provider number. Kan told investigating officers that he had met respondent and Pang on an overseas trip. After they returned, Pang called Kan and told him that she and respondent wanted to become business partners with Kan. Under the partnership, they would pay Kan \$6,000 for "consulting," and Kan would give them his Denti-Cal provider number. Kan never worked at the Oakdale Road office and never provided any consultant services to respondent or Pang. Between April 2003 and November 2003, while his Medi-Cal provider numbers were suspended, respondent billed Denti-Cal \$3.7 million using Kan's provider number. Kan told investigating officers that he knew respondent would be submitting claims to Denti-Cal under his provider number, but had no idea that so much money would be involved.

9. In November 2004, respondent, Pang, and 19 dentists who worked at Hatch Dental were charged with committing various crimes in connection with the practice. The convictions of respondent and Pang followed.

10. At hearing, respondent testified that he has not done anything wrong and that he does not feel bad about anything he did at Hatch Dental. He stated that he never did a filling that was not appropriate and necessary, never encouraged any unnecessary procedures, and never engaged in and was never aware of any fraudulent practices at Hatch Dental.

Respondent's testimony is not credible. Respondent has been convicted of felony health-benefits fraud and has agreed to pay \$2 million in restitution to the State of California and his former patients. His claim that he is innocent of any wrongdoing is inconsistent with his conviction and inconsistent with the extensive evidence of dishonesty in his dental practice. Respondent's unpersuasive claim of innocence demonstrates a fundamental lack of honesty. His testimony is disregarded.

11. Pang was the only lay witness called by respondent. The substance of Pang's testimony was the same as her husband's. She denied any wrongdoing at Hatch Dental, and specifically denied that Hatch Dental engaged in any fraudulent billing practices. The billing associated with patient V.T. illustrates the tenor of Pang's testimony. Included in V.T.'s chart are bills for services that were never performed. (Finding 21.) Pang testified, unpersuasively, that the documents were not actual bills but "practice" bills. Pang's testimony is not credible and it is disregarded.

RESPONDENT'S TREATMENT OF PATIENTS V.T., M.S., AND MELANIE S.

12. Two experts testified on whether respondent's treatment of V.T., M.S., and Melanie S. was consistent with the standard of care and whether his treatment was excessive.

David Crawford, D.D.S., testified on behalf of complainant. He is a practicing dentist in San Francisco, where he has maintained a practice for 40 years. For the past 15 years, he has served on the peer review committee of the San Francisco Dental Society. For 10 years,

from 1987 to 1997, Crawford was an expert examiner for the California Dental Board and graded the clinical examinations of new dentists.

Charles S. Syers, D.D.S, M.S., is a dentist and a maxillofacial surgeon. He has been a dentist since 1965 but has not practiced dentistry since 1990. Since then, Syers has taught at various times at the University of Pacific and University of California schools of dentistry.

13. In every situation of any significance, Crawford and Syers disagreed on the applicable standard of care. For example:

Crawford testified that the standard of care is to obtain parental consent before treating a minor. Syers stated that parental consent is not necessary to perform routine treatment on a 17-year-old patient such as V.T.

In Crawford's opinion, the standard of care requires a dentist to chart (among other things) a review of the patient's medical and dental history and her chief complaint, and the dentist's examination of intraoral and extraoral structures, pathology, and pre-existing conditions. Syers disagreed. He stated that a patient may not have a chief complaint, and that a dentist is only required to chart what he referred to as "positive" information, not "negative" information.

Crawford and Syers disagreed on the standard of care that existed in 2002 for the treatment of patients with mitral valve prolapse. Crawford testified that the standard of care required a dentist to discuss the condition with the patient and to premedicate her with antibiotics, even for a cleaning, unless the patient's physician indicated otherwise. Bacteria from the dental procedure, Crawford stated, can enter the bloodstream and cause inflammation of the heart. Syers testified that the standard of care did not require special treatment of a patient with mitral valve prolapse unless a "major cutting" procedure was involved. Syers stated that a dentist was not required to contact the patient's cardiologist, because "you could not reach them and they would tell you [premedication] is not required." Nor was a dentist required to prescribe antibiotics on a prophylactic basis, because "more harm is caused by giving antibiotics than by not giving them."

Crawford testified that the standard of care requires that an amalgam filling penetrate the dento-enamel junction. Amalgam fillings, Crawford stated, require a mechanical lock to stay in place and, unless the filling penetrates sufficiently into the dento-enamel junction, it will fail. Syers testified that there is no requirement that amalgam fillings penetrate the dento-enamel junction.

Crawford stated that the standard of care prohibits a dentist from seeking pre-authorization for subgingival curettage based on a periodontal chart with falsely documented pocket depths, such as charting pocket depths around teeth that have been extracted. Syers disagreed. He stated that it is not negligence to seek pre-authorization on a fraudulent chart, because seeking pre-authorization does not affect the patient's actual treatment.

14. Crawford and Syers also disagreed on whether the fillings respondent performed on V.T., M.S., and Melanie S. were necessary or excessive. The first time he saw V.T., respondent placed 28 restorative surfaces in 15 teeth; at his first appointment with M.S., he performed 40 restorative surfaces in 21 teeth; and when he first saw Melanie S., respondent performed 21 restorative surfaces in 11 teeth.

Crawford reviewed the patients' pretreatment x-rays and found that, with a few exceptions, there was no objective evidence of decay to support respondent's treatment. Crawford acknowledged that some areas of decay may not be visible on x-rays. He found it significant, however, that these patients showed no evidence of interproximal decay, which is visible on x-rays. The interproximal surfaces – the areas between the teeth – are the surfaces most susceptible to decay because food is trapped between the teeth. Respondent performed extensive treatment on the surfaces least susceptible to decay – the incisal surfaces and the facial and lingual surfaces above the gum line – and no interproximal restorations. He also performed a relatively large number of FIL's, an uncommon procedure on young patients such as V.T., M.S., and Melanie S. In total, patients V.T., M.S., and Melanie S. had 69 teeth. Respondent treated 50 of those teeth and did not do a single interproximal filling, "overwhelming" evidence in Crawford's opinion that respondent's treatment was excessive and unnecessary. Crawford found no entries in the patients' charts to justify the extensive treatment respondent performed.

Syers concluded that the restorations respondent performed were proper in all respects. Despite the lack of objective evidence of decay to support the procedures, Syers opined that the treatment was justified by respondent's clinical examination and judgment. Respondent, Syers testified, "used a mirror and an explorer" to detect decay. Syers stated, "You could fill every tooth in the mouth on one visit. It all depends on the dentist's clinical judgment." Syers testified that "there was a clinical indication for everything [respondent] did."

15. Syers's opinions on the standard of care are not persuasive. He is not a practicing dentist, and has not practiced for over 15 years. Syers did not offer a convincing rationale for his opinions. It is not apparent that, confronted with the risk of heart disease, antibiotics would do more harm than good; that parental consent is not required when a patient is almost 18, but not in fact 18; or that amalgam fillings do not require the mechanical lock that Crawford described. No plausible rationale can support a standard of care that permits the preparation and tendering of fraudulent periodontal charts. And, in general, the standard of care described by Syers advanced the interests of respondent at the expense of the patient.

Syers's credibility as an expert is diminished further by his opinion that all the restorations respondent performed were justified by respondent's clinical examination. No factual basis supports Syers's opinion. Syers himself was not present during any of respondent's examinations. His assertion that respondent "used a mirror and an explorer" to detect decay not visible on x-ray is mere conjecture. It is true that respondent testified that every filling he performed was necessary based upon his examination. Syers, however,

offered his opinion before respondent testified. And, in any event, respondent's testimony cannot support Syers's opinion. Respondent is not honest and his clinical judgment is not trustworthy. Respondent has been convicted of felony health benefits fraud, and is obligated to make restitution to the state and his patients in the amount of \$2 million. Respondent encouraged his dentists to perform unnecessary procedures – particularly fillings – to raise production. Syers's opinions are accorded little weight.

16. Crawford's opinions are based on a fair reading of the objective evidence, guided by his knowledge, experience, and 40 years of dental practice. His approach to the evidence was reasoned and balanced. During his testimony, he demonstrated a willingness to change or revise his opinions to account for new information. Crawford's opinions are credible and persuasive, and were relied on in making the following findings about respondent's treatment of V.T., M.S., and Melanie S.

Patient V.T.

17. Patient V.T. presented at Hatch Dental in Stockton on July 5, 2002. V.T. was 17 years old. She had three existing fillings and two severely decayed and broken teeth. Full-mouth x-rays were taken that day. On July 5, 2002, Hatch Dental did not have parental consent to administer treatment to V.T. Parental consent was not obtained until July 8, 2002. The standard of care required that Hatch Dental obtain parental consent before treating V.T.

18. On July 5, 2002, Dr. Williams placed amalgam restorations in eight teeth. He recommended extraction of teeth #19 and #30 at the next visit.

19. V.T. returned to Hatch Dental on July 25, 2002. At that appointment, Dr. Williams extracted tooth #19, and placed three amalgam restorations in teeth #18, #20, and #21. He recommended extraction of tooth #30 at the next visit.

20. When V.T. returned to Hatch Dental on July 31, 2002, she was seen by respondent. Respondent extracted tooth #30. In addition, respondent performed 26 restorative surfaces in 12 teeth that were not clinically indicated and were not necessary. Respondent did not tell V.T. how many fillings she was going to get. At the same visit, respondent prepared two amalgam restorations that did not extend sufficiently into the dento-enamel junction. Respondent documented that he performed these restorations on dental records, billing, and/or insurance forms used to present claims to Denti-Cal. The standard of care precludes the performance of restorations that are not necessary and the placement of amalgam restorations that do not extend sufficiently into the dento-enamel junction.

21. Respondent billed Denti-Cal for patient visits on July 30, August 27, 28, 29 and 30, 2002, visits for which there is no clinical documentation. Respondent billed Denti-Cal for a patient visit on September 4, 2002, but respondent's bill states that on that day he rendered treatment to tooth #30, which had been extracted on July 31, 2002.

22. The following information is not noted in V.T.'s chart:

- a. Parental consent, in writing, prior to treatment;
- b. Review of medical and dental history along with a chief complaint;
- c. Examination and notation of intraoral and extraoral structures, pathology, and pre-existing conditions;
- d. Periodontal examination along with a review of the patient's current and past dental hygiene habits and nutrition;
- e. A thorough review of current and past dental radiographs;
- f. Notation of presentation of the treatment plan, prognosis and rationale to the minor and her parent or guardian, prior to treatment, sequencing the treatment proposed in descending order of most to least urgency; and
- g. Notation of change in treatment planning and rationale, along with signed permission from the patient and/or guardian for the proposed changes to the original treatment plan.

The standard of care required that this information be noted in V.T.'s chart.

23. Respondent's treatment of V.T. was an extreme departure from the standard of care, and incompetent, and repeatedly negligent, when he:

- a. Failed to include in V.T.'s chart the information set forth in Finding 22;
- b. Performed restorations on 26 surfaces in 12 teeth on July 31, 2002, and prepared two amalgam restorations that did not extend sufficiently into the dento-enamel junction;
- c. Over-treated V.T. on July 31, 2002; and
- d. Performed restorations when there was no clinical indication for doing so, thus permanently compromising or injuring adult virgin teeth.

24. Respondent rendered excessive treatment to V.T. when he:

- a. Performed restorations on 26 surfaces in 12 teeth on July 31, 2002;
- b. Over-treated V.T. on July 31, 2002; and

- c. Performed restorations when there was no clinical indication for doing so, thus permanently compromising or injuring adult virgin teeth.

Patient M.S.

25. On April 29, 2002, M.S. accompanied her uncle to Hatch Dental in Ceres. M.S. was a 24-year-old female with healthy virgin dentition. M.S. decided to have her teeth cleaned. She completed a medical history form before she was seen by respondent, and reported on the form that she had mitral valve prolapse.

26. M.S. was treated by respondent on April 29. He did not discuss M.S.'s mitral valve prolapse condition with her; he did not attempt to contact her doctor and did not give her antibiotics. He ordered a set of full-mouth x-rays. Respondent then performed 40 restorative surfaces in 19 teeth that were not clinically indicated and were not necessary. He documented that he performed these restorations on dental records, billing, and/or insurance forms used to present claims to Denti-Cal. The standard of care required respondent to discuss M.S.'s mitral valve prolapse condition with her, and to contact her physician before treating her or give her antibiotics on a prophylactic basis. The standard of care precludes the performance of restorations that are not necessary.

27. On April 29, respondent completed a treatment plan for M.S. that called for four quadrants of root planing and root scaling, and he sought pre-authorization from Denti-Cal to perform that procedure. The request for pre-authorization was based on a periodontal chart with falsely documented pocket depths; among other things, the chart documented pocket depths for four wisdom teeth that M.S. did not have. Respondent's treatment plan for M.S. also called for 11 additional restorations on five teeth that were not treated that day. The standard of care prohibits a dentist from seeking pre-authorization for root planing and root scaling on falsely documented pocket depths.

28. On April 29, respondent did not tell M.S. what treatment she needed or what treatment he intended to perform. When M.S. left the office that day, the receptionist told her that she would need to make an appointment to come back for her additional fillings. When the receptionist told M.S. how many fillings she had received, M.S. was shocked. The receptionist told M.S. that she was not the only person that had happened to. The standard of care required respondent to obtain M.S.'s consent before he performed 40 restorative surfaces in 19 teeth.

29. Respondent's treatment of M.S. constituted an extreme departure from the standard of care, and was incompetent, and was repeatedly negligent, when he:

- a. Failed to discuss her mitral valve prolapse with her or her physician;
- b. Failed to administer antibiotics prior to performing dental work;

- c. Performed 40 restorative surfaces in 19 adult virgin teeth in one visit on April 29, 2002;
 - d. Over-treated M.S. on April 29, 2002;
 - e. Performed restorations without the consent of M.S.;
 - f. Recommended, and sought pre-authorization from Denti-Cal for, root planing and scaling based on falsely documented pocket depths; and
 - g. Performed restorations when there was no clinical indication for doing so, thus permanently compromising or injuring adult virgin teeth.
30. Respondent rendered excessive treatment to M.S. when he:
- a. Performed 40 restorative surfaces in 19 adult virgin teeth in one visit on April 29, 2002;
 - b. Over-treated M.S. on April 29, 2002;
 - c. Recommended that M.S. return for additional restorations after treating her on April 29, 2002;
 - d. Sought pre-authorization from Denti-Cal for root planing and root scaling based on false documentation of pocket depths; and
 - e. Performed restorations when there was no clinical indication for doing so, thus permanently compromising or injuring adult virgin teeth.

Patient Melanie S.

31. On December 6, 2001, Melanie S. went to Hatch Dental in Modesto for teeth cleaning and a check-up. At that time, Melanie S. was a healthy 23-year-old with three existing silver amalgam restorations. She was seen by Dr. Ravanera. Dr. Ravanera ordered a set of full-mouth x-rays and prepared a treatment plan that called for restorations on 15 surfaces of 12 teeth. On December 6, Dr. Ravanera placed 10 silver amalgam restorations in eight teeth.

32. On December 6, 2001, Hatch Dental sought, and later received, authorization to perform four quadrants of root scaling and root planing for Melanie S. Hatch Dental's records state that the procedure was performed on February 20, 2002, but Melanie S. did not go to Hatch Dental on that day and never had that procedure performed.

33. Melanie S. returned to Hatch Dental on December 10, 2001, and was seen by respondent. Respondent placed 14 silver amalgam restorations, and five composite resin

restorations, in 11 teeth, thereby performing restorations on 14 more surfaces than Dr. Ravanera had recommended on his treatment plan. Of those procedures, 10 restorative surfaces in six teeth were not necessary or clinically indicated. Respondent documented that he performed the restorations on dental records, billing, and/or insurance forms used to present claims to Denti-Cal. The standard of care precludes the performance of restorations that are not necessary.

34. Respondent did not note the following information in Melanie S.'s chart:

- a. Notation of pathology that justified the aggressive treatment plan suggested by Dr. Ravanera and the further treatment by respondent; and
- b. Notation of treatment planning rationale, presentation and justification to the patient, prior to respondent's treatment.

The standard of care required that this information be noted in Melanie S.'s chart.

35. Respondent's treatment of Melanie S. constituted an extreme departure from the standard of care, and was incompetent, and was repeatedly negligent, when he:

- a. Failed to include the information specified in Finding 34 in Melanie S.'s chart;
- b. Restored 10 surfaces in six adult teeth on December 10, 2001;
- c. Over-treated Melanie S. on December 10, 2001; and,
- d. Restored 10 surfaces in six adult teeth when there was no clinical indication for doing so, thus permanently compromising or injuring adult teeth.

36. Respondent rendered excessive treatment to Melanie S. when he:

- a. Restored 10 surfaces in six adult teeth on December 10, 2001;
- b. Over-treated Melanie S. on December 10, 2001; and,
- c. Restored 10 surfaces in six adult teeth when there was no clinical indication for doing so, thus permanently compromising or injuring adult teeth.

COSTS

37. The bureau has incurred costs of \$44,155.10 in its investigation and prosecution of this case. These costs are found to be reasonable. Respondent did not offer any evidence that he is unable to pay these costs.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence to a reasonable certainty.

2. The objections raised by respondent in his Special Notice of Defense have been considered and found to be without merit.

Criminal conviction

3. Under Business and Professions Code sections 490 and 1670.1,² the bureau may suspend or revoke the license of a dentist who is convicted of a crime substantially related to the qualifications, functions, or duties of a dentist. Cause exists to suspend or revoke respondent's license by reason of his conviction of a violation of Penal Code section 550, subdivision (b)(3). (Finding 2.)

Patient V.T.

4. First cause for discipline. Under section 1670, the bureau may suspend or revoke the license of a dentist who has committed gross negligence. Cause exists to suspend or revoke respondent's license by reason of the matters set forth in Findings 17, 20, 22, and 23.

5. Second cause for discipline. Under section 1670, the bureau may suspend or revoke the license of a dentist for incompetence. Cause exists to suspend or revoke respondent's license by reason of the matters set forth in Findings 17, 20, 22, and 23.

6. Third cause for discipline. Under section 1670, the bureau may suspend or revoke the license of a dentist for repeated acts of negligence. Cause exists to suspend or revoke respondent's license by reason of the matters set forth in Findings 17, 20, 22, and 23.

7. Fourth cause for discipline. Under section 1670, the board may suspend or revoke the license of a dentist who engages in unprofessional conduct. Section 1680, subdivision (p), defines "unprofessional conduct" to include "clearly excessive . . . treatment." Cause exists under these sections to suspend or revoke respondent's license by reason of the matters set forth in Findings 20 and 24.

² All subsequent references are to the Business and Professions Code unless otherwise noted.

8. Fifth cause for discipline. Under section 1680, subdivision (a), as it relates to section 1670, the board may suspend or revoke the license of a dentist who "[obtains] any fee by fraud or misrepresentation." Under section 810, as it relates to section 1670, the bureau may suspend or revoke the license of a dentist who presents or causes to be presented a false insurance claim (subd. (a)(1)) or knowingly prepares a false insurance claim with the intent to present it (subd. (a)(2)). Under Penal Code section 550, as it relates to sections 810 and 1670, the bureau may suspend or revoke the license of a dentist who engages in insurance fraud. Cause exists under these sections to suspend or revoke respondent's license by reason of the matters set forth in Findings 20, 21, and 24.

Patient M.S.

9. Sixth cause for discipline. Cause exists to suspend or revoke respondent's license pursuant to section 1670 (gross negligence), by reason of the matters set forth in Findings 26, 27, 28, and 29.

10. Seventh cause for discipline. Cause exists to suspend or revoke respondent's license pursuant to section 1670 (incompetence), by reason of the matters set forth in Findings 26, 27, 28, and 29.

11. Eighth cause for discipline. Cause exists to suspend or revoke respondent's license pursuant to section 1670 (repeated acts of negligence), by reason of the matters set forth in Findings 26, 27, 28, and 29.

12. Ninth cause for discipline. Cause exists to suspend or revoke respondent's license pursuant to section 1680, subdivision (p) (excessive treatment), by reason of the matters set forth in Findings 26, 27, and 28.

13. Tenth cause for discipline. Cause exists to suspend or revoke respondent's license pursuant to section 1680, subdivision (a) (unprofessional conduct), as that section relates to sections 810, subdivisions (a)(1) and/or (a)(2) (insurance fraud), and to Penal Code section 550 (insurance fraud), by reason of the matters set forth in Findings 26, 27, and 30.

Patient Melanie S.

14. Eleventh cause for discipline. Cause exists to suspend or revoke respondent's license pursuant to section 1670 (gross negligence), by reason of the matters set forth in Findings 33, 34, and 35.

15. Twelfth cause for discipline. Cause exists to suspend or revoke respondent's license pursuant to section 1670 (incompetence), by reason of the matters set forth in Findings 33, 34, and 35.

16. Thirteenth cause for discipline. Cause exists to suspend or revoke respondent's license pursuant to section 1670 (repeated acts of negligence), by reason of the matters set forth in Findings 33, 34, and 35.

17. Fourteenth cause for discipline. Cause exists to suspend or revoke respondent's license pursuant to section 1680; subdivision (p) (excessive treatment), by reason of the matters set forth in Findings 33 and 36.

18. Fifteenth cause for discipline. Cause exists to suspend or revoke respondent's license pursuant to section 1680, subdivision (a) (unprofessional conduct), as that section relates to sections 810, subdivisions (a)(1) and/or (a)(2) (insurance fraud), and to Penal Code section 550 (insurance fraud), by reason of the matters set forth in Findings 32, 33 and 36.

Other matters

19. Sixteenth cause for discipline. The accusation alleges that respondent is subject to discipline pursuant to section 1680, subdivision (c), which prohibits the aiding and abetting of the unlicensed practice of dentistry. The evidence failed to support this allegation. No cause for discipline exists pursuant to section 1680, subdivision (c).

20. Seventeenth cause for discipline. Under section 1680, subdivision (d), the bureau may suspend or revoke the license of a dentist who aids and abets licensed persons in the unlawful practice of dentistry. Respondent encouraged dentists working at Hatch Dental to perform unnecessary procedures, to submit treatment authorization requests for unnecessary dental procedures, and to submit billings for unnecessary dental procedures or procedures that were not performed. (Findings 3 through 11.) Cause exists under this section to suspend or revoke respondent's license.

21. Eighteenth cause for discipline. Under section 1680, subdivision (p), the bureau may suspend or revoke the license of a dentist who administers excessive treatment and diagnostic procedures. Respondent prescribed and administered excessive dental treatment and diagnostic procedures. (Findings 3 through 11, Legal Conclusions 7, 12 & 17.) Cause exists under this section to suspend or revoke respondent's license.

22. Nineteenth cause for discipline. Under section 1680, subdivision (y), the bureau may suspend or revoke the license of a dentist who aids and abets the negligent or incompetent practice of dentistry. Respondent encouraged, aided and abetted licensed dentists to practice dentistry in a negligent or incompetent manner. (Findings 3 through 11.) Cause exists under this section to suspend or revoke respondent's license.

23. Twentieth cause for discipline. The accusation alleges that respondent is subject to discipline pursuant to section 1680, subdivision (ee), which prohibits the utilization of unlicensed persons to perform functions which can only be performed by licensed persons. The evidence failed to support this allegation. No cause for discipline exists pursuant to section 1680, subdivision (ee).

24. Twenty-first cause for discipline. Section 1685 provides that it is unprofessional conduct for a dentist "to require, either directly or through an office policy, or knowingly permit the delivery of dental care that discourages necessary treatment or permits clearly excessive treatment, incompetent treatment, grossly negligent treatment, repeated negligent acts, or unnecessary treatment, as determined by the standard of practice in the community." Respondent directed dentists at Hatch Dental to ignore serious dental pathology, and required or knowingly permitted clearly excessive and unnecessary treatment. (Findings 3 through 11, Legal Conclusion 22.) Cause exists under section this section, as it relates to section 1670, to suspend or revoke respondent's license.

Costs

25. Section 125.3 authorizes the bureau to recover its reasonable costs of investigation and enforcement from a respondent whose license is disciplined. The bureau is authorized to recover \$44,155.10 from respondent. (Finding 37.)

Discipline

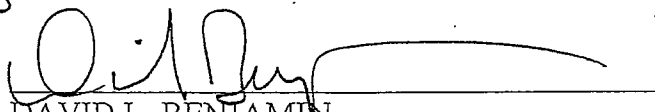
26. As the owner of Hatch Dental, respondent engaged in fraud on a massive scale. As the treating dentist of patients V.T., M.S., and Melanie S., respondent rendered excessive treatment that was far below the standard of care. In both roles, respondent placed his own financial interests above his patients' health. There is no evidence of meaningful rehabilitation. Despite his felony fraud conviction and his \$2 million restitution obligation, respondent maintains that he did nothing wrong. His attitude toward dental practice today is no different than it was when he was operating Hatch Dental. Respondent's continued licensure is a threat to the people of California. It would be contrary to the public interest to allow respondent to retain his license to practice dentistry or his certificate to practice oral sedation, even on a probationary basis.

ORDER

1. Dentist License No. 42956 and Oral Conscious Sedation Certificate No. 355 issued to respondent Kyon Maung Teo are revoked pursuant to Legal Conclusions 3 through 18, 20 through 22, and 24, jointly and for each of them.

2. Respondent shall pay to the bureau the costs associated with its investigation and enforcement of this matter in the amount of \$44,155.10.

DATED: December 5, 2008


DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings